

§ 21.5023

the part-time equivalent) unless VA determines that additional months of benefits under 38 U.S.C. Chapter 31 are necessary to accomplish the purposes of a rehabilitation program.

(Authority: 38 U.S.C. 3034(a), 3231, 3323(a))

[51 FR 12852, Apr. 16, 1986; 51 FR 16517, May 5, 1986, as amended at 53 FR 34495, Sept. 7, 1988; 57 FR 38614, Aug. 26, 1992; 61 FR 29029, June 7, 1996; 74 FR 14670, Mar. 31, 2009]

§ 21.5023 Nonduplication; Federal programs.

An individual may not receive educational assistance allowance under 38 U.S.C. Chapter 32, if the individual is:

(a) On active duty and is pursuing a course of education which is being paid for, in whole or in part, by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service), or

(Authority: 38 U.S.C. 3241, 3681)

(b) Attending a course of education or training paid for, in whole or in part, under the Government Employees' Training Act.

(Authority: 38 U.S.C. 3241, 3681)

[45 FR 31, Jan. 2, 1980, as amended at 47 FR 51744, Nov. 17, 1982; 61 FR 7217, Feb. 27, 1996]

CLAIMS AND APPLICATIONS

§ 21.5030 Applications, claims, and time limits.

(a) To become a participant an individual must apply to his or her Service Department on forms prescribed by the Service Department and/or the Secretary of Defense.

(b) Rules and regulations of the applicable Service Department and/or the Department of Defense shall determine if the application is timely.

(c) The provisions of the following sections shall apply to claims for educational assistance under 38 U.S.C. chapter 32:

(1) Section 21.1029—Definitions.

(2) Section 21.1030—Claims.

(3) Section 21.1031—VA responsibilities when a claim is filed.

38 CFR Ch. I (7–1–12 Edition)

(4) Section 21.1032—Time Limits

(Authority: 38 U.S.C. 3232, 3241, 3471; Pub. L. 94–502, Pub. L. 99–576)

[45 FR 31, Jan. 2, 1980, as amended at 48 FR 3368, Jan. 25, 1983; 53 FR 34495, Sept. 7, 1988; 64 FR 23772, May 4, 1999]

ELIGIBILITY

§ 21.5040 Basic eligibility.

(a) *Individuals not on active duty.* Whether an individual has basic eligibility under 38 U.S.C. Chapter 32 for educational assistance depends upon when he or she entered the military service, the length of that service, and the character of that service.

(Authority: 38 U.S.C. 3202).

(b) *Service requirements for all individuals not on active duty.* (1) An individual not on active duty:

(i) Must have entered the military service after December 31, 1976, and before July 1, 1985;

(Authority: 38 U.S.C. 3202, Pub. L. 99–576)

(ii) Must not have and except as provided in paragraph (g) of this section must not have had basic eligibility under 38 U.S.C. Chapter 34;

(iii) Must have received an unconditional discharge or release under conditions other than dishonorable from any period of service upon which eligibility is based;

(iv) Must either have:

(A) Served on active duty for a least 181 continuous days, or

(B) Been discharged or released from active duty for a service-connected disability.

(2) The Department of Veterans Affairs will consider that the veteran has an unconditional discharge or release if:

(i) The individual was eligible for complete separation from active duty on the date a discharge or release was issued to him or her, or

(ii) The provisions of § 3.13(c) of this chapter are met.

(3) The provisions of § 3.12 of this chapter as to character of discharge and § 3.13 of this chapter as to conditional discharges are applicable.

(Authority: 38 U.S.C. 3202)

Department of Veterans Affairs

§21.5040

(c) *Additional active duty service requirements for some individuals not on active duty—Chapter 32.* (1) Unless exempted by paragraph (d) of this section, persons who originally enlist in a regular component of the Armed Forces after September 7, 1980, or who enter on active duty after October 16, 1981 (either as an enlisted member or an officer) to be eligible under 38 U.S.C. Chapter 32, must first complete the shorter of:

(i) 24 continuous months of active duty, or

(ii) The full period for which the individual was called or ordered to active duty.

(2) For the purpose of paragraph (c)(1) of this section the Department of Veterans Affairs considers that an enlisted person originally enlisted in a regular component of the Armed Forces on the date he or she entered on active duty even though he or she may have signed a delayed-entry contract on an earlier date.

(3) In computing time served for the purpose of this paragraph, the Department of Veterans Affairs will exclude any period during which the individual is not entitled to credit for service as specified in §3.15 of this chapter. However, those periods will be included in determining if the service was continuous.

(d) *Individuals exempt from additional active duty requirements.* (1) An individual who originally enlists in a regular component of the Armed Forces after September 7, 1980, or who enters on active duty after October 16, 1981 (either as an enlisted member or officer), will be eligible to receive benefits under 38 U.S.C. Chapter 32 based upon the ensuing period of active duty, and is exempt from the provisions of paragraph (c) of this section if he or she subsequently:

(i) Is discharged or released from active duty:

(A) Under 10 U.S.C. 1173 (hardship discharge), or

(B) Under 10 U.S.C. 1171 (early-out discharge), or

(C) For a disability incurred in or aggravated in line of duty; or

(ii) Is found by Department of Veterans Affairs to have a service-connected disability which gives the indi-

vidual basic entitlement to disability compensation as described in §3.4(b) of this chapter. Once the Department of Veterans Affairs makes this finding, the exemption will continue to apply even if the disability subsequently improves and becomes noncompensable.

(2) An individual who enters on a period of active duty after October 16, 1981, is also exempt from the provisions of paragraph (c) of this section if he or she:

(i) Previously completed a continuous period of active duty of at least 24 months, or

(ii) Was discharged or released from a previous period of active duty under 10 U.S.C. 1171 (early-out discharge).

(3) In computing time served for the purpose of this paragraph, the Department of Veterans Affairs will exclude any period during which the individual is not entitled to credit for service as specified in §3.15 of this chapter. However, those periods will be included in determining if the service was continuous.

(e) *Savings provision.* An individual may become a participant and establish basic eligibility under the provisions of this section based upon a period of active duty service which began before October 16, 1981. He or she would not lose the basic eligibility based upon that period of service if, following a release from active duty, the individual reenters on active duty after October 16, 1981, and fails to meet the requirements of paragraph (c) of this section or qualify for an exemption under paragraph (d) of this section. He or she will receive a refund of any contributions he or she may make to the fund during the second period of active duty. See §21.5065.

(Authority: 38 U.S.C. 3202, 5303A)

(f) *Individuals on active duty.* To establish basic eligibility under 38 U.S.C. Chapter 32 for educational assistance an individual on active duty:

(1) Must have entered into military service after December 31, 1976, and before July 1, 1985.

(Authority: 38 U.S.C. 3202, Pub. L. 96-466, Pub. L. 99-576)

§ 21.5041

38 CFR Ch. I (7–1–12 Edition)

(2) Must have served on active duty for a period of 181 or more continuous days after December 31, 1976, and

(3) If not enrolled in a course, courses or a program of education leading to a secondary school diploma or equivalency certificate, must have completed the lesser of the following two periods of active duty:

(Authority: 38 U.S.C. 3231(b))

(i) The individual's first obligated period of active duty which began after December 31, 1976, or

(ii) The individual's period of active duty which began after December 31, 1976, and which is 6 years in length,

(4) If enrolled in a course, courses or a program of education leading to a secondary school diploma or equivalency certificate, the individual:

(i) Must be an enlisted member of the Armed Forces,

(ii) Must be a participant

(iii) Must be training during the last 6 months of his or her first period of active duty, or any time thereafter, and

(5) If he or she originally enlisted after September 7, 1980, must have completed at least 24 months of his or her original enlistment

(Authority: 38 U.S.C. 3231(b), 10 U.S.C. 977)

(g) *Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 10 U.S.C. chapter 1606.* An individual who serves in the Selected Reserves may not receive credit for that service under both 38 U.S.C. Chapter 32 and 10 U.S.C. Chapter 1606. If he or she wishes to receive educational assistance based upon this service, the veteran must elect the chapter under which he or she will receive benefits.

(1) This election must be in writing and submitted to VA.

(2) If a veteran elects to receive educational assistance under 38 U.S.C. Chapter 32, and negotiates an educational assistance check which is based upon the period of service for which the election was made, the election is irrevocable. Negotiation of an educational assistance check provided under either 38 U.S.C. chapter 32 or 10 U.S.C. chapter 1606, but based upon a period of service which preceded the

period for which an election was made, will not serve to make the election irrevocable.

(Authority: 38 U.S.C. 3221(f); Pub. L. 101–237)

[48 FR 36577, Aug. 12, 1983, as amended at 51 FR 12852, Apr. 16, 1986; 53 FR 34496, Sept. 7, 1988; 57 FR 38614, Aug. 26, 1992; 61 FR 20728, May 8, 1996; 61 FR 29029, June 7, 1996]

§ 21.5041 Periods of entitlement.

(a) *Ten-year delimiting period.* Except as provided in § 21.5042 no educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after the later of the following:

(1) His or her last discharge or release from a period of active duty of 90 days or more of continuous service; or

(2) His or her last discharge or release from a period of active duty of any length when the eligible individual is discharged or released—

(i) For a service-connected disability;

(ii) For a medical condition which preexisted such service and which VA determines is not service-connected;

(iii) For hardship; or

(iv) Involuntarily for convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3231; Pub. L. 94–502, Pub. L. 99–576, Pub. L. 101–237)

(b) *Use of entitlement.* The individual—

(1) May use his or her entitlement at anytime during the 10-year period after the last discharge or release from active duty or other period as provided pursuant to § 21.5042 of this part;

(2) Is not required to use his or her entitlement in consecutive months.

(Authority: 38 U.S.C. 3232, Pub. L. 94–502, Pub. L. 99–576)

[53 FR 34496, Sept. 7, 1988, as amended at 57 FR 38614, Aug. 26, 1992]